

AMENDED IN SENATE APRIL 12, 2004

**SENATE BILL**

**No. 1711**

**Introduced by Senator Bowen**

February 20, 2004

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~~An act to amend Section 472.5 of the Business and Professions Code, to amend Section 1795.92 of the Civil Code, to amend Section 26509 of the Government Code, and to amend Sections 415 and 426 of, to repeal Section 232 of, and to repeal Chapter 6 (commencing with Section 3000) of Division 2 of, the Vehicle Code, relating to vehicles. An act to amend Sections 3008 and 3050 of, and to repeal Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 of, the Vehicle Code, relating to vehicles.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1711, as amended, Bowen. New Motor Vehicle Board.

~~Existing~~

*(1) Existing law establishes a New Motor Vehicle Board in the Department of Motor Vehicles that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as specified.*

~~This bill would abolish the board and would revise and repeal related statutes to reflect that abolition. The bill would transfer duties imposed on the board under statutes governing a dispute resolution program and a motor vehicle adjustment program, as defined, to the department.~~

*Existing law grants the board the power to hear and decide, on appeal, decisions of the department involving activities and practices regulated by the board. Existing law allows the board to resolve certain related disputed matters involving a member of the public and licensees governed by the board.*

*This bill would delete the board's appeals process and the power of the board to resolve related matters involving a member of the public and licensees governed by the board. The bill would clarify that these provisions and dispute resolution provisions apply to licensees governed by the board.*

*(2) Existing law authorizes the board to direct the department to conduct investigations and make related reports, and authorizes the board to order the department to exercise its authority or power regarding the license of any new motor vehicle dealer.*

*This bill would authorize the board to request, rather than direct or order, respectively, the department to undertake these functions.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 472.5 of the Business and Professions~~  
 2     ~~SECTION 1. Section 3008 of the Vehicle Code is amended to~~  
 3     ~~read:~~  
 4     3008. (a) All meetings of the board shall be open and public,  
 5     and all persons shall be permitted to attend any meeting of the  
 6     board, except that the board may hold executive sessions to  
 7     deliberate on the decision to be reached upon the evidence  
 8     introduced in a proceeding conducted in accordance with Chapter  
 9     5 (commencing with Section 11500) of Part 1 of Division 3 of Title  
 10    2 of the Government Code.  
 11    ~~(b) At all meetings of the board, open or executive, involving~~  
 12    ~~an appeal from a decision of the Director of Motor Vehicles as~~  
 13    ~~hereinafter provided for, the director or his authorized~~  
 14    ~~representative may attend, present the position of the department~~  
 15    ~~and thereafter shall absent himself from any executive session at~~  
 16    ~~the request of any member of the board.~~  
 17    ~~(c) Within the limitations of its powers and authority as herein~~  
 18    ~~conferred, and in the event of disagreement between the board and~~  
 19    ~~the director regarding the decision to be reached as herein~~  
 20    ~~provided, the decision of the board shall be final.~~  
 21    SEC. 2. ~~Section 3050 of the Vehicle Code is amended to read:~~  
 22    3050. The board shall do all of the following:  
 23    (a) Adopt rules and regulations in accordance with Chapter 3.5  
 24    (commencing with Section 11340) of Part 1 of Division 3 of Title

2 of the Government Code governing those matters that are specifically committed to its jurisdiction.

~~(b) Hear and determine, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.~~

~~(c) Consider any matter concerning the activities or practices of any a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative licensed under that chapter.~~ A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After that consideration, the board may do any one or any combination of the following:

(1) ~~Direct~~ *Request that* the department ~~to~~ conduct an investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between ~~any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative~~ *licensees subject to this subdivision.*

(3) ~~Order~~ *Request that* the department ~~to~~ exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

~~(d)~~

(c) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, or 3065.1. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

~~(e)~~

(d) Notwithstanding subdivisions ~~(e)~~ (b) and ~~(d)~~ (c), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

*SEC. 3. Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 of the Vehicle Code is repealed.*

*Code is amended to read:*

~~472.5. The Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.~~

~~(a) Fees collected pursuant to this section shall be deposited in the Certification Account in the Consumer Affairs Fund and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the department in administering this chapter and to pay the Department of Motor Vehicles to fund its activities in implementing its duties under this section. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.~~

~~(b) On or before May 1 of each calendar year, a manufacturer shall file with the Department of Motor Vehicles a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, and shall, upon written notice delivered to the manufacturer by certified mail, return receipt requested, pay to the Department of Motor Vehicles a fee, not to exceed one dollar (\$1) for each motor vehicle sold, leased, or distributed by or for the manufacturer in this state during the preceding calendar year. The total fee paid by each manufacturer shall be rounded to the nearest~~

1 dollar in the manner described in Section 9559 of the Vehicle  
2 Code. Not more than one dollar (\$1) shall be charged, collected,  
3 or received from any one or more manufacturers pursuant to this  
4 subdivision with respect to the same motor vehicle.

5 (c) (1) The fee required by subdivision (b) is due and payable  
6 not later than 30 days after the manufacturer has received notice  
7 of the amount due and is delinquent after that time. A penalty of  
8 10 percent of the amount delinquent shall be added to that amount,  
9 if the delinquency continues for more than 30 days.

10 (2) If a manufacturer fails to file the statement required by  
11 subdivision (b) by the date specified, the Department of Motor  
12 Vehicles shall assess the amount due from the manufacturer by  
13 using as the number of motor vehicles sold, leased, or otherwise  
14 distributed by or for the manufacturer in this state during the  
15 preceding calendar year the total number of new registrations of  
16 all motor vehicles sold, leased, or otherwise distributed by or for  
17 the manufacturer during the preceding calendar year.

18 (d) On or before February 1, the department shall notify the  
19 Department of Motor Vehicles of the dollar amount necessary to  
20 fully fund the program established by this chapter during the  
21 following fiscal year. The Department of Motor Vehicles shall use  
22 this information in calculating the amounts of the fees to be  
23 collected from manufacturers pursuant to this section.

24 (e) For purposes of this section, “motor vehicle” means a new  
25 passenger or commercial motor vehicle of a kind that is required  
26 to be registered under the Vehicle Code, but the term does not  
27 include a motoreycle, a motor home, or a vehicle whose gross  
28 weight exceeds 10,000 pounds.

29 (f) The Department of Motor Vehicles may adopt regulations  
30 to implement this section. The regulations shall include, at a  
31 minimum, a formula for calculating the fee, established pursuant  
32 to subdivision (b), for each motor vehicle and the total amount of  
33 fees to be collected from each manufacturer.

34 (g) Any revenues already received by the Arbitration  
35 Certification Program and deposited in the Vehicle Inspection and  
36 Repair Fund for the 1991-92 fiscal year that have not yet been  
37 spent shall be deposited into the Certification Account in the  
38 Consumer Affairs Fund.

39 SEC. 2.—Section 1795.92 of the Civil Code is amended to read:  
40 1795.92.—Manufacturers shall have the following duties:

1 ~~(a) A manufacturer shall, within 90 days of the adoption of an~~  
2 ~~adjustment program, subject to priority for safety or~~  
3 ~~emission-related recalls, notify by first-class mail all owners or~~  
4 ~~lessees of motor vehicles eligible under the program of the~~  
5 ~~condition giving rise to and the principal terms and conditions of~~  
6 ~~the program.~~

7 ~~(b) Copies of all notices mailed in accordance with subdivision~~  
8 ~~(a) shall be sent to the Department of Motor Vehicles and made~~  
9 ~~available for public inquiries.~~

10 ~~(c) A manufacturer shall, within 30 days of the adoption of any~~  
11 ~~new adjustment program, notify its dealers, in writing, of all the~~  
12 ~~terms and conditions thereof.~~

13 ~~(d) A manufacturer who establishes an adjustment program~~  
14 ~~shall implement procedures to assure reimbursement of each~~  
15 ~~consumer eligible under an adjustment program who incurs~~  
16 ~~expenses for repair of a condition subject to the program prior to~~  
17 ~~acquiring knowledge of the program. The reimbursement shall be~~  
18 ~~consistent with the terms and conditions of the particular program.~~  
19 ~~The manufacturer shall notify the consumer within 21 business~~  
20 ~~days of receiving a claim for reimbursement whether the claim will~~  
21 ~~be allowed or denied. If the claim is denied, the specific reasons~~  
22 ~~for the denial shall be stated in writing.~~

23 ~~(e) Any consumer who, prior to acquiring knowledge of an~~  
24 ~~adjustment program, incurs expenses for repair of a condition~~  
25 ~~subject to the adjustment program may file a claim for~~  
26 ~~reimbursement under subdivision (d). The claim shall be made in~~  
27 ~~writing to the manufacturer within two years of the date of the~~  
28 ~~consumer's payment for repair of the condition.~~

29 ~~SEC. 3. Section 26509 of the Government Code is amended~~  
30 ~~to read:~~

31 ~~26509. (a) Notwithstanding any other provision of law,~~  
32 ~~including any provision making records confidential, and~~  
33 ~~including Title 1.8 (commencing with Section 1798) of Part 4 of~~  
34 ~~Division 3 of the Civil Code, the district attorney shall be given~~  
35 ~~access to, and may make copies of, any complaint against a person~~  
36 ~~subject to regulation by a consumer-oriented state agency and any~~  
37 ~~investigation of the person made by the agency, where that person~~  
38 ~~is being investigated by the district attorney regarding possible~~  
39 ~~consumer fraud.~~

1 ~~(b) Where the district attorney does not take action with respect~~  
2 ~~to the complaint or investigation, the material shall remain~~  
3 ~~confidential.~~

4 ~~(c) Where the release of the material would jeopardize an~~  
5 ~~investigation or other duties of a consumer-oriented state agency,~~  
6 ~~the agency shall have discretion to delay the release of the~~  
7 ~~information.~~

8 ~~(d) As used in this section, a consumer-oriented state agency is~~  
9 ~~any state agency that regulates the licensure, certification, or~~  
10 ~~qualification of persons to practice a profession or business within~~  
11 ~~the state, where the regulation is for the protection of consumers~~  
12 ~~who deal with the professionals or businesses. It includes, but is~~  
13 ~~not limited to, all of the following:~~

- 14 ~~(1) The Dental Board of California.~~
- 15 ~~(2) The Medical Board of California.~~
- 16 ~~(3) The State Board of Optometry.~~
- 17 ~~(4) The California State Board of Pharmacy.~~
- 18 ~~(5) The Veterinary Medical Board.~~
- 19 ~~(6) The California Board of Accountancy.~~
- 20 ~~(7) The California Architects Board.~~
- 21 ~~(8) The State Board of Barbering and Cosmetology.~~
- 22 ~~(9) The Board for Professional Engineers and Land Surveyors.~~
- 23 ~~(10) The Contractors' State License Board.~~
- 24 ~~(11) The Funeral Directors and Embalmers Program.~~
- 25 ~~(12) The Structural Pest Control Board.~~
- 26 ~~(13) The Bureau of Home Furnishings and Thermal Insulation.~~
- 27 ~~(14) The Board of Registered Nursing.~~
- 28 ~~(15) The State Board of Chiropractic Examiners.~~
- 29 ~~(16) The Board of Behavioral Science Examiners.~~
- 30 ~~(17) The State Athletic Commission.~~
- 31 ~~(18) The Cemetery Program.~~
- 32 ~~(19) The State Board of Guide Dogs for the Blind.~~
- 33 ~~(20) The Bureau of Investigations.~~
- 34 ~~(21) The Court Reporters Board of California.~~
- 35 ~~(22) The Board of Vocational Nursing and Psychiatric~~  
36 ~~Technicians of the State of California.~~
- 37 ~~(23) The Osteopathic Medical Board of California.~~
- 38 ~~(24) The Division of Investigation.~~
- 39 ~~(25) The Bureau of Automotive Repair.~~
- 40 ~~(26) The Board for Geologists and Geophysicists.~~



1 ~~(27) The Department of Alcoholic Beverage Control.~~

2 ~~(28) The Department of Insurance.~~

3 ~~(29) The Public Utilities Commission.~~

4 ~~(30) The State Department of Health Services.~~

5 ~~SEC. 4. Section 232 of the Vehicle Code is repealed.~~

6 ~~SEC. 5. Section 415 of the Vehicle Code is amended to read:~~

7 ~~415. (a) A “motor vehicle” is a vehicle that is self-propelled.~~

8 ~~(b) “Motor vehicle” does not include a self-propelled~~  
9 ~~wheelchair, invalid tricycle, or motorized quadricycle, if operated~~  
10 ~~by a person who, by reason of physical disability, is otherwise~~  
11 ~~unable to move about as a pedestrian.~~

12 ~~SEC. 6. Section 426 of the Vehicle Code is amended to read:~~

13 ~~426. “New motor vehicle dealer” is a dealer, as defined in~~  
14 ~~Section 285, who, in addition to the requirements of that section,~~  
15 ~~either acquires for resale new and unregistered motor vehicles~~  
16 ~~from manufacturers or distributors of those motor vehicles or~~  
17 ~~acquires for resale new and unregistered off-highway motoreycles~~  
18 ~~from manufacturers or distributors of the vehicles. No distinction~~  
19 ~~shall be made, nor any different construction be given to the~~  
20 ~~definition of “new motor vehicle dealer” and “dealer” except for~~  
21 ~~the application of Section 11704.5.~~

22 ~~SEC. 7. Chapter 6 (commencing with Section 3000) of~~  
23 ~~Division 2 of the Vehicle Code is repealed.~~